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EVIDENCE—COMPETENCY—RATE OF WAGES.—*STAGG v. BARRETT, ET AL.*, 76 ATL. 974 (N. J.).—*Held*, that upon a controversy concerning the rates of wages for mechanics prevailing at and before the making of a certain building contract, it was not erroneous to exclude evidence of the rates that prevailed long after the making of the contract. Swayze, Minturn and Bogert, J. J., *dissenting*.

Not all facts which are in some degree logically relevant to the issues in the case are regarded in law as having sufficient probative force to justify the expenditure of the time which would be involved in receiving and attempting to test and weigh them. *Amoskeag Mfg. Co. v. Head*, 59 N. H. 332. Hence, whenever the court feels that a fact is not of probative value commensurate with the time required for its use as evidence, either because the fact is so remote in time, *New Era Mfg. Co. v. O'Reilly*, 197 Mo. 466, or in place, *Junglaus v. Great N. R. Co.*, 99 Minn. 515, or because it is so uncertain, *Melvin v. Bullard*, 35 Vt. 268, or so conjectural in its nature, *Muller v. Southern Pac. R. Co.*, 83 Cal. 240, that it can have little or no weight in tending to prove the disputed fact, it may be rejected. Hence, it has been held where the issue was the mental capacity of a grantor in a deed at the time of its execution, that evidence of the condition of his mind a year afterwards may be excluded in the discretion of the court as being too remote. *White v. Graves*, 107 Mass. 325. In like manner also, where the fact in issue was the amount of overflow of a watercourse that was due to rainfall, evidence of the amount of rain which fell in a valley eight miles away was held too remote to be received, though relevant. *Carhart v. State*, 100 N. Y. Supp. 499. But evidence cannot reasonably be said to be too remote in time, either prior or subsequent, if its existence at that time raises a fair inference of its continued existence at the time involved in the inquiry. See *Bank of State of N. Y. v. S. Nat. Bank*, 170 N. Y. 1, and *McColloch v. Dobson*, 133 N. Y. 114. In thus determining whether or not a fact should be excluded on account of remoteness an important consideration affecting the propriety of the court's action is whether more direct or conclusive proof is already in the case or could have been obtained by a reasonable amount of diligence. *Long v. Traveller's Ins. Co.*, 113 Iowa 259.

EVIDENCE—JUDICIAL NOTICE—FACTS CONCERNING CENSUS.—*WILLIAMS v. BROOKS*, 109 PAC. 211 (WASH.).—*Held*, that judicial notice will be taken of the population of a city as shown by the United States census of 1900, and that here has been no Federal census completed since that time.

Proof is never required of a fact of which the Court is bound to take judicial notice. *Secrist v. Perry*, 109 Ill. 188; *State v. Scott*, 59 Nebr. 499; *Hart v. Baltimore & O. R. R. Co.*, 6 W. Va. 336. And in general the courts will take judicial notice of matters relating to government and its administration. *United States v. Jackson*, 104 U. S. 41; *Perkins v. Perkins*, 7 Conn. 558; *Prince v. Skillin*, 71 Me. 361; *Ogden v. Lund*, 11 Tex. 688. So judicial notice will be taken of the government surveys and the legal sub-divisions of the public lands. *Rogers v. Cady*, 104 Cal. 288; *Gardner v. Eberhart*, 82 Ill. 316; *Quinn v. Champagne*, 38 Minn. 322; *At-*

water v. Schenk, 9 Wis. 160. And it is well established that judicial notice will be taken of the population of a town as shown by the United States census. *Chicago & A. R. R. Co. v. Baldrige*, 177 Ill. 229; *Page v. McLure*, 79 Vt. 83. In the same manner the results of a State census, *Denny v. State*, 144 Ind. 503; *State v. Dolan*, 93 Me. 467; or even a school census, *Kokes v. State*, 55 Nebr. 691; *Stratton v. Oregon City*, 35 Ore. 409, will be recognized.

HOMICIDE—MURDER—INTENT.—*PEOPLE v. LOOSE*, 92 N. E. 100 (N. Y.).—*Held*, that if a defendant, in an attempt to shoot his son, unintentionally killed his daughter, he was guilty of murder in the first degree.

The general rule is that one who kills another, mistaking him for a third person, whom he intended to kill, is guilty or innocent of the offense charged, the same as if the fatal act had killed the person intended. *Brown v. State*, 147 Ind. 28; *State v. Renfrow*, 111 Mo. 589; *McGee v. State*, 62 Miss. 172. It has been held that a shot fired at one person with the intent to wound or kill, carries with it the ingredient of malice no matter who may be the victim. *Wareham v. State*, 25 Ohio St. 601. And the claim of the defendant that he mistook the person shot for another with whom he had been on unfriendly terms, cannot lessen his guilt or change the degree of his crime. *Com. v. Eisenhower*, 181 Pa. St. 470. In a case where a person while engaged in a personal difficulty with another fires upon him and as the latter runs away, again fires, misses him, and kills a third person who is near by, he is guilty of murder and not involuntary manslaughter. *Durham v. State*, 70 Ga. 264. And in *State v. Levelle*, 34 S. C. 120, it was held that a person who in the attempt to take his own life with a deadly weapon, unintentionally takes the life of an innocent bystander, was guilty of murder. The English rule is that where one person kills another intending to kill a third person, it is necessary, in order to constitute the crime of murder in the first degree, to show that the accused intended to kill such third person and that such person was or might be supposed to be near the spot at about the time of the fatal deed. *Reg. v. Cleary*, 2 Fost. & F. 850. And it is the rule that where a person tries in a sudden heat and passion to kill one party, and accidentally kills another, he cannot be guilty of less than manslaughter. *Sims v. Com.*, 12 Ky. L. 215. However, where a party attempts to shoot another in self-defense and accidentally kills a third party, such killing would be excusable and justifiable if the killing of the party intended would have been excusable and justifiable. *Pinder v. State*, 27 Fla. 370; *Butler v. State*, 92 Ga. 601. But self-defense is not available to relieve one from responsibility, who shoots and kills one person when he intends to kill another, unless the circumstances are such as to justify an ordinary reasonable and prudent man in believing himself in danger. *State v. Brown*, 4 Pen. (Del.) 120.

HOMICIDE—SELF-DEFENCE—RETREAT.—*STATE v. BISSETTE*, 76 ATL. 288 (CONN.).—*Held*, that where one without fault is assaulted in his dwelling house, he need not retreat from his assailant, but he may resist the assault even to the extent of taking the life of the assailant when necessary.